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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,178	02/13/2002	Antonio Proni	07040.0120	4673
7590 03/09/2004				
Finnegan, Henderson, Farabow Garrett & Dunner, L.L.P. 1300 I Street, N.W. Washington, DC 20005-3315		EXAMINER: COOLEY, CHARLES E		
		ART UNIT 1723		
		.PAPER NUMBER		

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/073,178

Applicant(s)

PRONI ET AL. 

Examiner

Charles E. Cooley

Art Unit

1723

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 11-22.

Claim(s) withdrawn from consideration: _____.

8. ☒ The drawing correction filed on 25 February 2004 is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____



Charles E. Cooley
Primary Examiner
Art Unit: 1723

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Continuation of 2. NOTE: The language added to the end of claim 11 regarding the diameter of the aggregates is a new issue mandating further review of the prior art. The specification and Figure 5 do not support that the completion of mixing of the material necessarily occurs when the aggregates achieve an average diameter of less than or equal to 50um. Figure 5 fails to attribute any significance to the 50um diameter and the specification only states that the aggregates of that size are almost completely eliminated but there is no cause and effect between this size of aggregate and the completion of mixing. The instant amendment thus raises even more issues of new matter. Regarding pages 9-10 of the remarks, discussions of cancelled claims and hypothetical claims which were never examined are a far-reaching but unconvincing attempt to establish support for the claimed invention. Regarding page 10 of the remarks, the prosecution history does not establish that the "end of incorporation. . ." necessarily and undeniably equates to the "mixing of material is completed". The remaining remarks utterly fail to establish that the mixing of the material is completed at the at the particular time when the pressing ram reaches the lower end-of-stroke position. The specification may support that other materials are processed or mixed in the method yet this does not unequivocally support that the mixing of material is completed at the particular point in the method steps of claim 11, namely when the ram reaches the lower end-of-stroke position. Regarding the prior art, any of the lower end-of-stroke positions in Borzenski can be deemed "the lower end-of-stroke position" lacking any claim language which would preclude such an interpretation. The instant amendment therefore raises many new issues yet resolves none and cannot be entered for examination or for appeal.